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HOSPITALS FOR THE INSANE

IN THE

STATE OF ILLINOIS.

A Reprint from the Seventh Biennial Report of the Illinois Board of State Commissioners of Public Charities.

Prepared by
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THE LAW OF COMMITMENT TO HOSPITALS FOR THE INSANE.

A Paper Prepared and Published at the request of the State Commissioners of Public Charities for the State of Illinois.

This subject of a jury trial has been discussed by the Board of Commissioners of State Charities of Illinois heretofore, in their reports, and we now beg leave to refer to the said reports, and especially to pages 69 to 73 inclusive of the report of 1878.

Without having the laws to refer to, we are informed that in only two or three states of the Union is the question of sanity or insanity submitted to a jury, in the absence of a criminal charge.

It is conceded that a popular feeling exists in favor of a jury trial.

But with the highest regard and veneration for a jury trial, where a necessity exists to investigate and try controverted facts, between two or more individuals or opposing parties, we maintain that there is no need of a jury trial when an individual is to be examined as to the question of his sanity, for the legitimate and charitable purpose of protection to himself and his property, and for the appliance of restorative means usual in such cases.

The question to be investigated is *sui generis*. It probably had no existence, when jury trial was established, as hospitals for the insane probably did not then exist.

We assume that the question of sanity or insanity is one of peculiar character. Insanity may be proved by the evidence of those not experts, but at the same time, it is a fact to be ascertained by evidence as to *mental condition*. And yet the first cause of this malady, as laid down by authority, is the injury to or derangement of the physical condition, in diversified ways, and the *ultimatum* of the case is that the individual is put into an institution to be dealt with as one diseased and requiring medical skill to restore the patient or alleviate the malady. In this we find the difference from cases of ordinary disease, and also find that the investigating, skilful mind is led to question the propriety or policy of submitting so peculiar a question to a jury of six persons, one only of whom is required to be a physician, as the law of Illinois now provides.

Is it not probable, that in practice, under the existing law of Illinois, one physician on the jury, and that one, perhaps, not a man versed deeply in his profession, or skilled in mental pathology, controls the verdict or determines the whole question submitted to

the jury? or more physicians are summoned as witnesses to establish the fact of insanity. It is obvious, then, that the medical man on the jury, or the medical witness or witnesses, in most cases, determine what is the condition of the patient or individual whose sanity is on trial. If the question of sanity or insanity is a medical question, why should we not refer its decision, under proper rules, restrictions and safeguards, in the first instance, to medical men?

In practice, numerous cases have arisen, showing the injurious and sometimes fatal effects of the excitement incident to a jury trial. We believe that in the majority of cases, especially of females, the trial before a jury, with the publicity given thereto, and all the formula of serving a summons by an officer of the law, and the attendance for the first time of the subject of the trial at a court-house, is highly detrimental, and may be fatal.

We have known, in one county, at least two cases of males who were tried before juries, and upon the first trial the jury failed to find the men insane; subsequent trials proved each of them to be insane in a high degree, the type being an excessive desire to buy, but not to sell, large quantities of property, not suitable to their condition or business, and unusual for them to deal in, thereby losing large sums of money by improvidence in dealing and incurring heavy debts. In one case the individual has been twice in the insane hospital at Jacksonville, but is now at large, having been materially benefited by medical treatment in the insane hospital, and he has now a conservator of his estate, and is also one whose case was first submitted to a jury under the act of the legislature for inquiry as to his being a fit subject to go to the insane hospital. The second man spoken of was a man of large property, once shrewd and capable in business. His first trial did not satisfy the jury of his insanity. On a second trial he was found insane and sent to the Jacksonville hospital, and died there, insane, raving mad, in a few days after being received there. In both the foregoing cases, there was an element in business circles which was profiting by sales to these two men, and they being subpœnaed as witnesses by counsel for the insane men, of course testified that the men were capable of transacting business and not insane. And yet every act of these men, in their home life and social relations, was at variance with the life of sane men, prejudicial to themselves and their families, and to honest creditors. It was the opinion of medical men and experts, that the public trial of both the men referred to was injurious to them, and in one instance the highest type of mania was developed, and early death ensued, from the excitement of arrest and trial. The man who died, a powerful man, resisted arrest, so that several persons were called in, and he was violently manacled at home.

Now, are juries infallible? We admit that a jury trial, which was adopted in lieu of the early English mode of trial by battle or ordeal, is a great improvement on the modes of our sturdy ancestors; that is, for the trial of questions of a nature to require the testing of mere facts not of a professional or scientific character, especially where a conflict of testimony may and does arise. But is it not true, in fact, that before enlightened judges in Illinois, there is with the citizen

suitor, as with the attorneys at the bar, a decided leaning, and in practice a constant preference, to try cases before a single judge, and those cases at law? And if we consider the mode of procedure in our courts of chancery, do we not find that, by the system there pursued, a single judge tries cases involving immense amounts of property, real and personal? Do we find an outcry that the sacred rights of the individual are jeopardized by this system in courts of equity?

The provisions of the constitution of the state of Illinois, now in force, which may be useful in investigating the question, May a jury trial be dispensed with? are as follows, from the bill of rights, Constitution of 1870, Article II.

§ 2. No person shall be *deprived* of life, liberty or property without *due process of law.*

§ 5. The right of trial by jury, as heretofore enjoyed, shall remain inviolate; but the trial of civil cases before justices of the peace by a jury of less than twelve men may be authorized by law.

The constitution of Illinois, of 1848, Art. 13, § 8, provided as follows:

That no freeman shall be imprisoned or disseized of his freehold liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty, or property, but by the judgment of his peers or the law of the land.

The supreme court of the state of Illinois, in case of *Bullock* vs. *Gamble*, 45 Ill. R. 218, decided that the terms "law of the land" and "due process of law" are synonymous and the same in meaning. Other decisions have been made construing the terms "due process of law," as well as the "law of the land," defining each as meaning a "general public law equally binding on all members of the community." *Vanzant* vs. *Waddell*, 2 Yerg. R., 260–270; *Walby* vs. *Kennedy*, ibid, 554; *State Bank* vs. *Cooper*, ibid, 599; *Jones* vs. *Perry*, 10 Yerg. R. 59–71. To determine what is "*due process of law*," two propositions must be considered: 1st, Had the legislature the constitutional power to pass it? and, 2d, Is it of a general and public nature, equally binding on every member of the community? *Sheppard* vs. *Johnson*, 2 Humph. R. 285–296; *Rhinehart* vs. *Schuyler*, 2 Gilman R. 519; *Clark* vs. *Lewis*, 35 Illinois R. 421. There are other decisions uniform on this point.

It may be urged by some, strenuous for a jury trial of the insane, that the constitution of 1870 recognizes the trial as essential, because the language is used, "the right of trial by jury as heretofore enjoyed shall remain inviolate." If that provision is now an impediment or hindrance to the dispensing with a jury, we ask, does not the term jury in the first part of that section mean a jury of twelve? Then is it not clear, from the exception in the latter part of that section in favor of a jury of less than twelve, before a justice of the peace, that it does not allow less than twelve in other cases where it is legally proper to have a jury? The term jury implies, when used in a constitution (without explanation), twelve men *ex vi termini.* (Bouvier's Dicty. Jury; 6 Metc. Mass. 231; 4 Ohio St. 177.; 2 Wise 22; 3 *id.* 219; 12 N. Y. 190; 13 *id.* 427.) Bouvier's Law Dictionary, Jury, 3. Trial by jury is defined in Bouvier's Law Dictionary "to be that form of trial in which the facts are determined by *twelve* men impartially selected from the

body of the country." Now if a jury consists of twelve, unless the constitution otherwise provides, is not the existing law in Illinois as to a jury of six, a violation of the constitution? Can it be said that the constitution of 1870 intended to perpetuate such a gross error? Why have twelve jurors when a conservator is to be appointed, and only six when the inquiry is made as to sanity, with a view of sending the party to an hospital? We maintain that there is neither reason nor law for the distinction.

The provision for a jury trial as to the commitment and trial of lunatics was introduced first in Illinois by act of the legislature in 1853, p. 242, § 6, also re-enacted in Laws, 1865, p. 85, § 3. The law now in force, re-enacted in 1874, provides:

§ 4. At the time fixed for the trial, a jury of *six* persons, one of whom shall be a physician, shall be impaneled to try the case.

And further provides for the challenge of the jury as in civil cases.

We suggest that, as used in that section, the term case is a misnomer. *Case* is defined by Bouvier to be, in law, "a suit, action or cause." We hold that an inquest, as it should be termed, and in fact is, cannot be defined by the term "case." If so, whose case is it? No plaintiff or defendant exists. It may be asked, is an inquest as to insanity a civil case? That which is not a case or suit is defined in law as "the matter of" (say the sanity of A. B.) We hold that it is not a case but an inquiry "in the matter of the sanity of A. B." Is the inquest upon an insane person a proper subject of *trial*, so as to come within the language of the constitution of 1870? We cannot conceive the necessity or propriety of holding it so to be. "The *province of the jury* is to determine the truth of the facts in dispute in civil cases, and the guilt or innocence of the person accused in criminal cases." The stress laid on a jury trial, as to a supposed insane person, is a snare and a delusion. Would you stop for a jury trial, before sending to an hospital a man whose leg or arm was broken, or who was literally mashed up in a railway collision? No! emphatically, no! Then why have a jury as to a mental affection, when the insane person is not to be deprived of life, liberty or property, but, like the wounded man, is to be sent to an hospital, for the individual's benefit, the cure of his mind, the most essential part of a man? It is absurd to require a jury, unless an issue is seriously and legally made, that a party is not insane, and the question of his restoration to society and to his rights must be inquired of as a contested point.

The result of the finding of the jury is that after the verdict is signed, as prescribed in section five, and a record thereof is made, as provided in section six, the clerk of the court in which the trial was had is to apply to the superintendent of the proper insane hospital for admission of the "insane person."

By section 8 it is provided that a warrant of commitment shall issue to *arrest* and convey the *insane person* to the hospital.

Section 9 gives the form of warrant.

Section 10 provides for a receipt or return by the superintendent that he has received *the patient*, which is to be returned to and filed by aforesaid clerk.

So far, in the law aforesaid, no provision is made for the review or reconsideration or new trial of the aforesaid finding or verdict of said jury, which has fixed the person's status as *insane*. How, then, may a person so committed be discharged or removed from the hospital for the insane? Section 18 of said law provides that—

> Whenever the trustees shall order a patient discharged, the superintendent shall at once notify the clerk of the court, etc.

Now, observe that the discharge by said trustees is not required to be upon any trial by jury, or by reason of or after a medical or scientific examination and a finding by competent persons that the "*insane*" person has been restored, or that it would be better that he be remitted to home life. The order of discharge may be merely the arbitrary or unskilled act of non-professional, unscientific men, of even high personal respectability. The aforesaid discharge by trustees is not put on any grounds of personal benefit to the insane. We suppose that the aforesaid power vested in them is intended to enable said trustees to get rid of chronic cases and to make room for more recent cases of insanity.

Section 20 of said law reads:

> When any patient shall be restored to reason, he shall have the right to leave the hospital at any time, and if detained therein contrary to his wishes after such restoration, shall have the privilege of a writ of *habeas corpus* at all times, either on his own application or that of any other person in his behalf. If the patient is discharged on such writ, and it shall appear that the superintendent has acted in bad faith or negligently, the superintendent shall pay all the costs of the proceeding.. Such superintendent shall moreover be liable to a civil action for false imprisonment.

It will be observed that this section refers to the *restoration to reason*, and the right of the individual to leave the hospital at any time. Let us see, does this section, or any part of the law aforesaid, provide who is to be the judge of said restoration, or who, other than the "insane person," called "the patient," is to pass upon the propriety or advantage to himself, of leaving the hospital? There is a total absence in the law of intimation how the question is to be solved, "Is the 'insane' person restored to reason?" No tribunal is appointed to decide that question. Is not the law very imperfect and lame in that particular? Should there not be some examination and certificate, at least, of competent medical men, or men versed in the treatment of insane persons, before the discharge?

Section 22 of said law provides that no one shall be received and kept in custody at an hospital for insane unless upon the finding of a jury and the order of a court of competent jurisdiction, and no trial shall be had on the question of sanity or insanity without the presence of the person alleged to be insane. Thus the trial and all its incidents are mandatory, and the forms prescribed must be pursued, before a person can be received into an hospital for the insane.

Recently it has been asked, and very properly, by the superintendent of one of our hospitals for the insane: "When does the effect of the verdict of the jury, which found a man insane, and the effect of his commitment cease to be operative, and when may the trustees and officers of the hospital refuse to act upon such verdict and committal?" To give instances, several of which have occurred: persons have been withdrawn by relatives; others have been

returned to counties by request of the officials thereof, in order to substitute other insane patients; some have escaped from the institution. One and all of the like cases have been presented at an hospital in Illinois to be again received. The superintendent asks: "Are we at liberty to receive again the same individual under the original verdict? or must a new finding be had, as in an original case?" A circuit judge has decided and ordered that a person who was at large from the hospital, having been sent by a verdict of another court, should be recommitted to the hospital, and he was so received without a new trial. These cases point out the necessity for some defined legal mode of discharge, and for more certain and exact language being used as to the effect of the original verdict for commitment to an hospital, as well as for some mode of deciding that a person is *rehabilitated* as a citizen without stint as to his legal status.

Has the legislature provided how the civil disqualification or disability—which is, as we assume, imposed by the aforesaid law, when a person is by jury declared insane—shall be removed, and the person reinstated in society, with all his legal rights, to act as a free and competent citizen?* We maintain that there is no such legal provision, and we contend that, under the existing laws, the legal effect of the finding of said jury that any individual is insane, is to affix that as the civil and personal status of that individual, *indefinitely*. It may be, that the person so found to be insane, and so disqualified, can overcome said verdict of insanity and the effect of said judicial order of commitment as insane, by proof *aliunde*, adduced upon a necessary occasion. But the statute leaves the question how and when proof may be made, to remove the effects of said verdict, and other legal proceedings, in uncertainty. Disqualification to do any legal act, as to contract marriage, to make a will, to enter into any of the various contracts or business relations of life, may be created by so grave an act as the verdict aforesaid and judicial proceedings, and yet we find a total absence of provision for the altering or overcoming of said verdict and proceedings and the restoration of civil rights and removal of disabilities. Should a matter of so vital importance be thus left? Is it not the duty of the legislature to reconsider the questions involved under that law?

Lest complication or misunderstanding may arise in interpreting the rights of individuals termed insane under the laws of Illinois, we will refer to another statute, passed at the time of the foregoing recited statute, which is entitled "An act to revise the law in relation to idiots, lunatics, drunkards and spendthrifts." This law provides for the appointment of a conservator of the estate of any of the foregoing classes on a trial and finding by a jury, as set

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*Decisions on Points as to Insanity.—"The legal presumption is that all persons of mature age are of sane memory. But after inquest found, the presumption is reversed until it is rebutted by evidence that he has become sane." *Lilly* vs. *Wagner*, etc., 27 Ill. 397.

The case in 85 Ill. 63, of *McCormack* vs. *Litt er*, is a peculiar one, but follows decision in 27 Ill. 397.

From 18 Ill. 284: When insanity or lunacy is once established to have existed, the presumption of its continuance arises, until rebutted by proof, the burthen of which lies upon the party alleging a restoration or lucid interval. 2 Greenleaf, Va., 371; 5 Johns R. 54; 5 Penn. State R. 441.

Act 1869, re-enacted 1874, declares contracts void after finding of jury.

forth in said law. The sections are numerous and the provisions complicated. It will be found that the law last named has no reference to the law as to commitment to an hospital for the insane. It is true that section 5 gives the custody of the person of the "insane," &c., to his conservator, and also the care of his estate and family. In this law we find, beginning with section 37 and in sections 38, 39 and 40, provisions as to the trial of the question, whether the individual has been restored to reason or to his normal condition, in the other cases provided for. Now, when property is involved, and that only, there is to be a trial and verdict of a jury before restoration to the condition antecedent to the appointment of a conservator, but when liberty, as assumed by advocates of a jury, and the future rights of the man, as to the most important acts of his life, are involved, it is left by our present legislation to blind chance to decide how, if ever, he is to be reinstated in his manhood.

It is asked what import and what weight is to be given to the verdict and finding of the jury that a person is insane. This seems to be a self-evident proposition; but let us see what is the value of such a verdict or how permanent it may be in its effects. "The very import of the term verdict shows the faith with which men received this 'final action of the jury.'" It was called *verdict* from *veritatis dictum*, a speaking or saying, the truth of the matter in issue. It is defined to be the "unanimous decision made by a jury and reported to the court on the matters lawfully submitted to them in the course of the trial of the cause." (Bouvier's Law Dictionary, *Verdict.*) Under proceedings in a common law case, and not one peculiarly statutory, as the law is, under which the commitment is ordered of an insane person to an hospital, there are grounds recognized for setting aside the verdict of a jury. There is a limit of time; it must be in the same court at the same term at which the verdict was found. Then, again, a writ of error lies in common law proceedings, and often an appeal is provided for. If there was manifest error on the face of the proceedings of the county court, under the law for commitment to the hospital aforesaid, it is probable that a writ of error would lie as a writ of right. A writ of *certiorari* to send up the record to a higher court might also prevail. These writs lead to an investigation only of the form of the proceedings and do not investigate the merits of the case, as no proof is before the higher court, unless a bill of exceptions has preserved the evidence, and that is unusual. These writs would rarely effect anything for the person who was found insane: errors rarely occur of mere form. It is laid down as the law "that a verdict is an act of such a solemn nature that unless the finding of the jury be clearly wrong the court will not disturb it;" as far as possible, its validity and regularity are to be presumed. This is the law when the evidence is already before the trial court on a motion for a new trial.*

In England a commission of lunacy is issued to try the fact of sanity or insanity. It is laid down by authority, and will be found in Ordronaux on Insanity, p. 235, "that it (a commission) is a pro-

* Authorities are cited for the foregoing in Proffatt on Jury Trial, S. 469.

ceeding tending to the forfeiture of civil rights over one's person and property, dependent upon the degree of mental incapacity established." In England, on restoration to reason, a *supersedeas* is issued out of court to set aside the commission and to enable the party to resume control of his property. It is further said by Ordronaux, p. 235: "The forfeiture, although continuous with the insanity, is not, therefore, an absolute one." No change in this respect has been made in the trust assumed by the State through its courts (meaning the State of New York) in the estate of a lunatic, since the statute 17, Edw. 2. its spirit still animates, "*mutatis mutandis*, our jurisprudence."

Ordronaux also says: "The finding of a verdict, which supports the inquisition, establishes to that extent the fact of lunacy, and the party is thereby placed under civil disability as to the right to enter into any contract except for necessaries."* This finding is constructive notice to the world of the party's incapacity to incur any legal obligation. The individual is regarded in law as civilly dead, and any acts thereafter performed by himself are treated as nullities. "So long, therefore, as the commission remains unrevoked, the *non compos* can do no valid act, the existence of the commission being conclusive of its invalidity." We ask: can a verdict of a jury, which is defined as so important and sacred an act, be any less effective and binding than a commission in lunacy? which in effect only differs in name from our verdict of a jury under the laws of Illinois.

We add further citations of law as to the civil status of the individual after inquest found or trial.

In Fitzhugh *v.* Wilcox, (12 Barber, N. Y. Reports, 235), it was held that "any contract made with a lunatic after office found was absolutely void." In Wadsworth *v.* Sharpstien, (14 Barber, 169), affirmed in 8 N. Y., 388), all the judges but one concurred in regarding the return of an inquisition as conclusive evidence of insanity. But VanDeusen *v.* Sweet, (51 N. Y., 378), the opinion in the Wadsworth and Sharpstien case was not approved; it was held that an inquisition is only presumptive evidence, and not conclusive of incapacity. These cases should warn us in Illinois not to leave our law in the uncertainty evidently existing as to the effect of the finding of a jury.

In chancery, in England, in order to be restored, the lunatic is required to file a petition to be inspected, and is tried by inspection and examination of witnesses, to see whether his being restored to his senses is of any continuation and likely to hold. Ordronaux cites authority and lays it down. "In all cases, therefore, where from any cause a person is placed under a committee, he cannot, though restored to reason, perform any valid act, without leave of the court first had and obtained." (Matter of Patterson, 4 How, p. 34.)

On the power of one once insane, to make a will, we find many authorities referred to in Jarman on Wills.

Cockburn, C. J., in a recent case says: "Where insane delusion has once been shown to have existed, it may be difficult to say whether the mental disorder may not have extended beyond the

particular form or instance in which it has manifested itself. It may be equally difficult to say how far the delusion may not have influenced the testator in the particular disposal of his property. And the presumption against a will under such circumstances becomes additionally strong, where the will is, to use the term of the civilians, an inofficious one, that is to say, one in which natural affection and the claims of near relationship have been disregarded. But where, in the result, a jury are satisfied that the delusion has not affected the general faculties of the mind, and can have had no effect upon the will, we see no sufficient reason why the testator should be held to have lost his right to make a will, or why a will made under such circumstances should not be upheld. Such an inquiry may involve, it is true, considerable difficulty, and require much nicety of discrimination, but we see no reason to think that it is beyond the power of judicial investigation and decision, or may not be disposed of by a jury directed and guided by a judge." (Pages 101 and 102, 1st Jarman on Wills.)

As affecting the power of a testator to make a will, or its effect on the same, there being in existence a verdict of a jury, we now refer to the general proposition that a "mad or lunatic person cannot, during the insanity of his mind, make a testament of lands or goods; but, if during a lucid interval he make a testament, it will be good." (1 Jarman on Wills, 66.) Does not the verdict of a jury, not in any wise recalled or reversed, make it difficult to establish sanity or a lucid interval, and might not courts construe the verdict as final and not allow it to be attacked indirectly or collaterally, but require a legal proceeding to reverse the verdict?

In Illinois if the verdict of a jury remains against a party, not in any wise revoked or recalled of record, and he makes a will, then, undoubtedly, on production of such verdict, so unrevoked, the *burthen of proof* of restoration to sanity or of lucid interval would be thrown upon the interested party setting up the will, and the following is an authority on that point: "But if insanity be proved, and a lucid interval is alleged to have existed at the time of the execution of the will, then, it is said, the burden of proof attaches to the party alleging such lucid interval." (3 Brown, 443; 1 Jarman on Wills, 106.) Other authorities on this point could be adduced. It is true that sanity is legally regarded as the natural condition, but insanity once established, proof is required to overcome the insanity shown to have existed.

Why should the legislation of Illinois leave the law in such a state as to cast a doubt, a shadow for life, over the civil rights of an individual, when by proper legislation the mode of removing the doubt can be provided for? Does not the uncertain condition in Illinois, under our law, demand a return to the common sense law, with modifications, once existing in Illinois, which virtually treated an insane person as mentally sick, and did not require him to be treated as a criminal and be tried by a jury? What good has been effected by the change in the law? We maintain that no good has been done, and that serious questions arise, clogging the individual's future, and also attaching more of a stigma, if such it be, of insanity by the finding of a jury. Why not leave the matter, as in many of our states of the United States and as in England, to

be dealt with as a scientific, professional question for the medical man and pathologist, and not for the finding by a verdict of jurors, based on slight evidence? Is it essential to liberty and to the maintaining of personal freedom from undue restraint, that the law should exist in its present form? A writ of *habeas corpus* will always lie, as a writ of right, to inquire into the cause of the detention of any party in an hospital for sane or insane. It is believed by many that our present jury law was superinduced by undue excitement, growing out of one case, which was by no means a clear case of misapplication of the rigor of the law. Is it essential or at all consistent that trial by jury be given or maintained, when the near relations, and, when none exist, then a respectable person of the county, must petition for the trial of the person's sanity or insanity, and it is obvious from the law that the proceeding is for the welfare of the individual supposed to be insane? It is not a criminal charge, and yet you treat the matter with the formality of a charge or trial for crime. In place of having a commission or board of physicians, you try the person and render a verdict, from which you provide no escape by his individual act that would be legal.

As a substitute for the jury trial of the insane, the legislature in its wisdom may interpose any humane safeguards deemed proper, in the first instance, of an inquest, as to sanity; or at any stage of the order for confinement, or after being sent to the hospital. It is suggested that an act has formerly been in progress of passage on this subject before the legislature of Illinois, which was likely to remedy the defects and hardships of the present system. That act as proposed is the subject of amendments or alterations, if needed.

Whilst on this subject, the effect and condition of the laws of Illinois, affecting insane persons, it may be well to inquire whether some and what legislation is needed as to the mode of ascertaining whether one retained in an hospital as *criminal* and yet insane has become sane, if such be alleged, and what is to be the order of discharge from the hospital, and to whose care the criminal is to be consigned if discharged as restored to reason?

Note.

Recent Decisions of the Supreme Court of the State of Illinois.

On the constitutional propriety of dispensing with a jury, the supreme court of the State of Illinois, in 103 Illinois, 367, "Petition of Ferrier," recognizes that in statutory proceedings, not akin to or under the "common law," a jury may be used of less than twelve, namely six, as provided in the law under consideration in that case, it not being a proceeding under the common law, but arising out of the question, was a female legally committed to the Industrial School for Girls? That court says: "That provision of the constitution, that the right of trial by jury as heretofore enjoyed shall remain inviolate, does not apply in such a case, referring to the case of the young girl aforesaid.

In *Ross* vs. *Irving*, 14 Illinois, 181, we find the supreme court considers the question, when it is of prime necessity to have a jury. In that case the question is as to the constitutionality of the law allowing three commissioners to value improvements, when a recovery in ejectment had taken place. The court says: "There is another view in which a jury is not required, under the constitution, to carry into effect the provisions of the law." Trial by jury is only required on issues of fact in civil and criminal cases in courts of justice, which is not understood to embrace the case of a mere assessment of damages or value made out of court." Cited by that court from 3 Paige, 45.

In the case of *Irving* vs. *Brownell*, the court considers other instances in which a jury is not required by the constitution. In 13 Ill. 127, the supreme court says: "Nor is this any violation of the right of trial by jury, which is secured by the constitution. Here was no trial, for there was *no issue between the parties to be tried.*"

Do not these citations sustain the argument that a jury is not necessary under the constitution in matters of inquiry as to the sanity of an individual? We have maintained that there is no issue, strictly so-called, to be tried.